



NO. H-121044
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HOME TRUST COMPANY

PETITIONER

AND:

STEWART EDWARD IRVINE,
CARMEL YOKO RICHTER,
SHERWIN JACK-YEN HO,
OLYMPIA TRUST COMPANY IN TRUST

RESPONDENTS

NOTICE OF APPLICATION

Name of Applicants: Carmel Yoko Richter, Sherwin Jack-Yen Ho

TO: Home Trust Company
Olympia Trust Company

607081-1406289 RDSA
27422 H121044

EC.00

TAKE NOTICE that an application will be made by the applicants to the presiding Master or Judge at the Courthouse at The Law Courts, 800 Smithe Street, Vancouver, British Columbia V5Z 4B2, on Monday, March 17th, 2014 at 9:45 in the forenoon or so soon thereafter as Counsel may be heard for the Orders set out in Part I below.

Part 1: ORDERS SOUGHT

1. the funds paid into Court, in the amount of \$111,516.51, on 20th February, 2014 by the Petitioner, Home Trust Company, being excess funds from the sale of the subject property (pursuant to the Order of Master Baker on 16th December, 2013), be immediately paid out to the law firm Spry Hawkins Micner (in Trust), Counsel for the Respondents Carmel Yoko Richter and Sherwin Jack-Yen Ho, holders of the second mortgage, formerly registered on title.

2. the applicants be entitled to their costs of and incidental to this application;

Part 2: FACTUAL BASIS

1. The subject property, a house in Maple Ridge, British Columbia, is the subject of this foreclosure action;
2. The Petitioner was granted Conduct of Sale of the property in 2012 and did market the property with a Listing Realtor;
3. On 16th December, 2013 Master Baker approved the sale of the property for a price of \$623,900.00;
4. The transaction closed, as scheduled, on 16th January, 2014;
5. The Petitioner was paid its mortgage balance, together with costs (the latter agreed amongst the parties to the action);
6. On 20th February, 2014 the Petitioner paid the excess funds, in the mount of \$111,516.51, into Court. Petitioner has paid all expenses and other costs associated with the foreclosure as well (including a Hydro payment);
7. The balance owing under the mortgage of the applicants exceeds the amount paid into Court;
8. The applicants, Respondents, Richter and Ho, are the holders of the second mortgage on title. No charge, other than the Petitioner's first mortgage, is registered on title prior to the charge of the applicants;

Part 3: LEGAL BASIS

1. The applicant, Petitioner, will rely on Rule 21-7 of the Supreme Court Civil Rules and s. 15 of the *Law and Equity Act*, R.S.B.C. 1996, C. 253.

Part 4: MATERIAL TO BE RELIED ON

1. Notice of Application (dated March 4, 2014);
2. Affidavit No. 4 of Carmel Yoko Richter and Sherwin Jack-Yen Ho (sworn March 4, 2014);
3. Requisition of Petitioner, indicating payment into Court (filed February 20, 2014);
4. Order Approving sale of the property (pronounced December 16, 2013);
5. Draft Order for payment out of Court.

The applicant estimates that the application will take five (5) minutes.

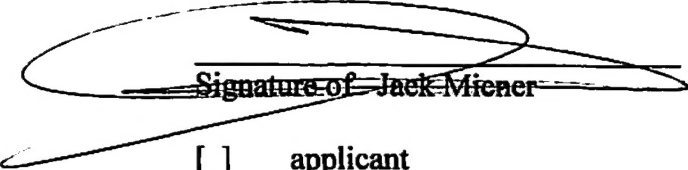
Master

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:

If you wish to receive notice of the time and date of the hearing or to respond to the application, you must

- a) file an application response in Form 33 within 5 days after the date of service of this Notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the application response and the other documents referred to in Rule 9-7(12) of the Supreme Court Civil Rules.

Dated: March 4, 2014



Signature of Jack Miener

☐ applicant

☒ Lawyer for applicants

To be completed by the Court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms:

Dated: March , 2014.

Signature of

☐ Judge

☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ document discovery
- ☐ oral examination for discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders
- ☐ experts
- ☒ other (application for payment out of Court)

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File no. 21903JM
Re: Home Trust v. Richter/Ho

Attention: Jack Micner

Spry Hawkins Micner
Barrister & Solicitor
Attention: Jack Micner/ Tracey Taylor-Maki
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